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OFFICE OF PETITIONS

In re Application of :
Kobayashi et al. :
Application No. 10/737,336 : DECISION GRANTING PETITION
Filed: December 16, 2003 : UNDER 37 CFR 1.55(c)
Attorney Docket No. KIK01 P-322A :
:

This is a decision on the renewed petition under 37 CFR 1.55(c), filed March 7, 2005, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Application No. 2000-166833, filed April 26, 2000.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on December 16, 2003. Application No. 09/838,905, which is a continuation of the instant application, was filed on April 20, 2001, which is within 12 months of April 26, 2000 (the filing date of the foreign application to which benefit is now being claimed). On March 7, 2005, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1370.00 was received with the previous petition on January 3, 2005. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is **GRANTED**.

A Corrected Filing Receipt, which reflects the above-noted foreign application, accompanies this decision on petition.

This matter is being referred to Technology Center AU 2863. The examiner of record will determine whether the instant application is entitled to the foreign priority claim under 35 U.S.C. § 119(a)-(d) upon receipt of a reply to the non-final Office action mailed on March 4, 2005.

Any inquiries directly pertaining to this matter may be directed to Paralegal Liana Chase at (571) 272-3206.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt